In the Court of Appeals of the State of Alaska

Adanna Rayshawn Muriel Francis, Appellant, v. **State of Alaska,** Appellee.	Court of Appeals No. **A-13736** **Order** Date of Order: **January 15, 2021**

Trial Court Case No. **3AN-19-02109CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Adanna Rayshawn Muriel Francis appeals the bail order imposed in this case. For the reasons explained here, we vacate the bail order and remand this case to the superior court for approval of a $3,000 cash performance bond and all of the conditions previously approved by the court.

Relevant factual background

On June 5, 2018, nineteen-year-old Adanna Francis hit and killed a pedestrian on the sidewalk with her car. Almost nine months later, on February 27, 2019, Francis was charged by indictment with second-degree murder and other related driving charges based on an allegation that she was driving under the influence of marijuana, with only a learner's permit, at the time she killed the pedestrian. During the nine months between the accident and her indictment, Francis remained in Alaska and had no law or driving violations. Francis has no prior criminal history.

Bail was initially set at $150,000 cash-only performance bond. Over the course of several bail hearings, Francis proposed various alternative bail release plans, and the superior court approved significant parts of those proposals. Under the final plan proposed by Francis, Francis would be subject to twenty-four-hour GPS-based electronic monitoring with conditions that included house arrest (except for approved passes), daily drug testing, and random compliance checks. Francis would also be under a no-driving condition. In addition to these safeguards, Francis would be monitored by two alternative third-party custodians except for three, twelve-hour periods per week when the primary third-party custodian was working. The superior court approved these components of Francis's bail release plan and also approved an unsecured $10,000 appearance bond and a waiver of extradition. However, the court refused to lower the performance bond below $20,000 cash only.[1]

Francis put forward evidence that her family was unable to afford the full $20,000 performance bond, but that they had been able to raise $3,000 after exhausting all their resources. Francis also put forward evidence that other defendants who were arguably similarly situated to her — *i.e.*, young defendants without a criminal history who were charged with second-degree murder or manslaughter for killing a person while

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[1] Francis's case is governed by the former bail statute. Under former AS 12.30.011(f)(1) (2018), based on her low-risk pretrial assessment, Francis was entitled to release on her own recognizance or with an unsecured appearance bond or unsecured performance bond unless the court found by clear and convincing evidence that "no nonmonetary conditions of release in combination with the release of the person on the person's own recognizance or upon execution of an unsecured bond [could] reasonably ensure the appearance of the person in court and the safety of the victim, other persons, and the community."

driving under the influence — had been released on conditions much less restrictive than Francis's bail release plan and with monetary bail much lower than the $20,000 imposed in Francis's case. Francis also emphasized that her pretrial risk assessment score was low, that she had no criminal history, and that she had been out of custody for the nine months between the accident and the indictment without incident. Lastly, Francis noted that the court should consider the ongoing impact of the COVID-19 pandemic in the community and correctional facilities.[2]

When the superior court refused to lower the performance bond below $20,000, Francis appealed that decision to this Court.

Why we remand this case to the superior court

Article I, Section 11 of the Alaska Constitution entitles criminal defendants to be released on bail. Moreover, "[s]ociety's interest in pretrial freedom for persons accused of crimes is strong," and "[t]he presumption of innocence, central to our system of criminal justice, also dictates in favor of pretrial release."[3] Although criminal defendants do not have an absolute right to monetary bail in an amount they can post,[4] both the United States and Alaska Constitutions prohibit the imposition of "excessive"

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[2] *See Karr v. State*, 459 P.3d 1183, 1185-86 (Alaska App. 2020).

[3] *Doe v. State*, 487 P.2d 47, 51 (Alaska 1971).

[4] *Gilbert v. State*, 540 P.2d 485, 486 n.12 (Alaska 1975) (citing *Reeves v. State*, 411 P.2d 212 (Alaska 1966)).

bail.[5] Excessive bail is that which goes beyond the amount actually necessary to fulfill the purposes of bail — *i.e.*, to reasonably assure the defendant's appearance and the safety of the community.[6] In other words, the court is required to impose the "least restrictive condition or conditions that will reasonably ensure the person's appearance and protect the victim, other persons, and the community."[7]

Absent legal error, we review a trial court's decision to impose a particular bail amount for an abuse of discretion.[8] Under this standard of review, an appellate court will uphold the trial court decision unless that decision was "arbitrary, capricious, manifestly unreasonable, or stemmed from an improper motive."[9] Francis argues that the $20,000 performance bond imposed here is an arbitrary amount and that the superior court has never adequately explained why imposing $17,000 above what she can afford is necessary given the highly restrictive electronic monitoring, house arrest, and partial third-party custodians that the court has already approved.[10]

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[5] U.S. Const. amend. VIII; Alaska Const. art. I, § 12.

[6] *See Stack v. Boyle*, 342 U.S. 1, 5 (1951); *Doe*, 487 P.2d at 51; *Torgerson v. State*, 444 P.3d 235, 237 (Alaska App. 2019).

[7] *See* AS 12.30.011(b) and former AS 12.30.011(j) (2018).

[8] AS 12.30.030(a).

[9] *Wahl v. State*, 441 P.3d 424, 430 (Alaska 2019) (internal quotations omitted).

[10] *See Brangan v. Commonwealth*, 80 N.E.3d 949, 964-66 (Mass. 2017) (recognizing that a "particularized statement as to why no less restrictive conditions will suffice," including "how the bail amount was calculated," is appropriate in light of due process concerns and "because holding a defendant on an unaffordable bail amount defeats bail's purpose of securing pretrial liberty").

We agree that the monetary amount imposed here constitutes an abuse of discretion, given the circumstances of this case. Francis proposed — and the superior court approved — a highly restrictive bail release plan with electronic monitoring, house arrest, and partial third-party custodians.[11] Francis also agreed to augment this plan with a $10,000 unsecured appearance bond and a $3,000 cash-only performance bond — which represented the maximum amount her family was able to generate after significant effort. Given all of the restrictive elements of the bail release plan, including the no-driving provision, random drug tests, and random compliance checks, it is not clear why imposing an additional $17,000 beyond what Francis's family's has the ability to pay, will make the community any safer or her bail plan materially more robust. Instead, we are left with a concern that the superior court's insistence on this amount is either arbitrary and capricious or that it stems from an improper motive — such as to punish Francis or keep her in jail pending trial on these charges.

We are also concerned by the superior court's apparent willingness to assume that Francis *will* violate her conditions of release. Francis has no prior criminal history, and she was clearly able to remain law-abiding for the nine months before the indictment with *no* supervision in place. While the superior court is entitled to rely on the grand jury's finding of probable cause and the danger to the community that those particular driving allegations suggest, the court is not entitled to simply assume a

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[11] Francis's house arrest permits limited passes for approved court, attorney, and medical appointments. To the extent that the superior court is concerned about these passes being used at a time when her third-party custodian is not available to drive her, the superior court could put additional limits on the passes.

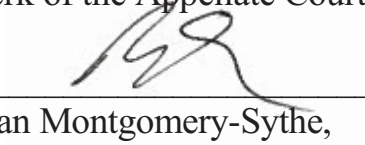
heightened level of dangerousness and lawlessness without additional evidence from the State to support such claims.

The superior court was required to impose the least restrictive bail conditions that would reasonably ensure Francis's appearance and the safety of the community.[12] Given the record in this case and all of the highly restrictive conditions already approved by the superior court, we conclude that the court abused its discretion when it imposed a performance bond in an amount that Francis had shown she would be unable to pay. Because we are vacating the $20,000 cash-only performance bond, we do not reach Francis's arguments that she is being denied equal protection based on her indigent status and race.

Accordingly, the superior court's bail order is REVERSED and this case is REMANDED to the superior court for approval of a $3,000 cash performance bond in addition to all of the other conditions previously approved by the court.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

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[12] Former AS 12.30.011(j) (2018).

cc: Court of Appeals Judges
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